THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 27th day of July, 2006

W.P.No.11468 of 1998

Between:

The Lankala Koderu Cooperative
Rural Bank Ltd., rep. by its
Secretary Sri D. Ram Mohan … Petitioner

and

V.V. Narasimha Raju & another … Respondents

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ORDER:

This Writ Petition is filed by the Lankala Koderu Cooperative Rural Bank Limtied being aggrieved by an Order dated 30-4-1997 in O.A.No.251 of 1994 on the file of A.P. State Cooperative Tribunal, Vijayawada, wherein the surcharge Order dated 3-4-1993 passed by the Deputy Registrar of Cooperative Societies, Bhimavaram in Rc.No.1994/92-B/D under Section 60 of the Andhra Pradesh Cooperative Societies Act,1964 (for short 'the Act') fixing liability on the 1st respondent for certain amount, which purported to have been misappropriated by him, was set aside and the matter was remanded for fresh consideration.

Respondent No.1 was an Accountant of the petitioner-society. While conducting an enquiry under Section 51 of the Act, certain irregularities and misappropriation purported to have been committed by the 1st respondent came to light. In view of the same, proceedings under Section 60 of the Act were taken up and after conducting an enquiry, the 1st respondent was made liable for payment of certain amounts. Aggrieved by the same, the 1st respondent carried the matter in appeal in O.A.No.251 of 1994 on the file of the A.P. Cooperative Tribunal, Vijayawada. The Tribunal, after hearing both the parties, allowed the appeal and remanded the matter to the Deputy Registrar of Cooperative Societies, Bhimavaram. Challenging the

same, the present Writ Petition is filed.

Heard both sides.

It was the contention of the 1st respondent before the Tribunal that he was not given sufficient opportunity at the time of enquiry under Sections 51 and 60 of the Act and the enquiry report in full was not supplied to him to enable him to submit a detailed explanation. Further, it is the case of the 1st respondent that the Deputy Registrar of Cooperative Societies did not examine one Ch. Vara Prasad in the surcharge enquiry in spite of a request being made by him. The surcharge authority failed to see that he is not at all responsible as an Accountant and it is the Secretary, who should have been held solely responsible for the FDR transactions. After perusal of the surcharge order and after a detailed consideration of the material made available on record, the Tribunal allowed the appeal and set aside the Order passed under Section 60 of the Act and remanded the matter to the surcharge authority for fresh consideration holding that no proper opportunity was given to the 1st respondent and no proper procedure was followed while conducting inspection or the enquiry. The rules of fair play were not adopted while dealing with the matter of the 1st respondent herein and he was not provided with opportunity to cross-examine the witnesses. The Tribunal further held as under:

> "5……But, so far as enquiry Section 60 of APCS Act is concerned, no rules are framed. But we make it clear that when there were no rules, C.P.C. and Civil Rules of Practice are applicable. Hence, Deputy Registrar has to adopt C.P.C., C.R.P. (Civil Rules of Practice) and the provisions in Indian Evidence Act while conducting an enquiry under Section 60 into the conduct of any person while conducting enquiry under Section 60 of APCS Act. For better guidance and appreciation we recommend the following procedure to be adopted by the Deputy Registrar for conducting an enquiry under Section 60 of APCS Act.
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> i) Soon after the report has been received, Section 51

shall be complied with by placing the same before the General body meeting.

ii) The 1st respondent after receiving the report, the same shall be treated as a plaint or a charge sheet and it shall be given a number by maintaining a register.

iii) After giving number to it, notice along with the copy of the report shall be sent to the delinquent fixing a date for his appearance through his Advocate or personally.

iv) After the delinquent appears before the Lower Court or lower authority, he shall be asked to file his reply statement in answer to the inspection report or enquiry report.

v) After giving two or three adjournments for filing his reply statement if the delinquent fails to file his reply statement, the Lower Court has to set him *ex parte* and proceed to record evidence of the Inspecting officer or Enquiry Officer by marking relevant documents and has to pass surcharge order or otherwise

vi) In the event, the delinquent files his reply statement, after perusing the statement, the lower court has to frame necessary points or issues for adjudication.

vii) Then the lower authority has to fix a date for taking evidence on the side of the Enquiry Officer or Inspection Officer. The lower authority has to take evidence of the persons connected with the enquiry report of inspecting report including the evidence of the Enquiry Officer/Inspection Officer and the lower authority has to mark documents on behalf of the Enquiry Officer as Ex.A1 and Ex.A2 etc. At the time of taking evidence the lower authority has to give opportunity to the delinquent to cross-examine the witnesses.

viii) After taking down the evidence on the side of the Enquiry Officer or Inspecting Officer, the lower Court has to ask the delinquent to adduce his evidence oral and documentary and has to take down the evidence adduced by the delinquent by giving opportunity to the Enquiry Officer or Inspecting Officer to cross-examine the delinquent and his witnesses. The exhibits produced by the delinquent may be marked as Ex.B1, Ex.B2 etc.

ix) After evidence is over the lower authority has to fix a date of hearing both sides. After hearing both sides,

the lower authority has to pass a reasoned order under Section 60(1) of the APCS Act.

In view of the above, I am of the opinion that the Tribunal has considered all aspects of the case and came to a reasonable conclusion in remanding the matter for fresh consideration in view of the gross violation of the procedure as well as the principles of natural justice while conducting the surcharge enquiry. No grounds are made out to interfere with the impugned Order, under Article 226 of the Constitution of India. The Writ Petition is devoid of merits and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

27-7-2006

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